

# Arrested Development



Reducing the number of  
young people in custody while  
reducing crime

Max Chambers



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## About the Author

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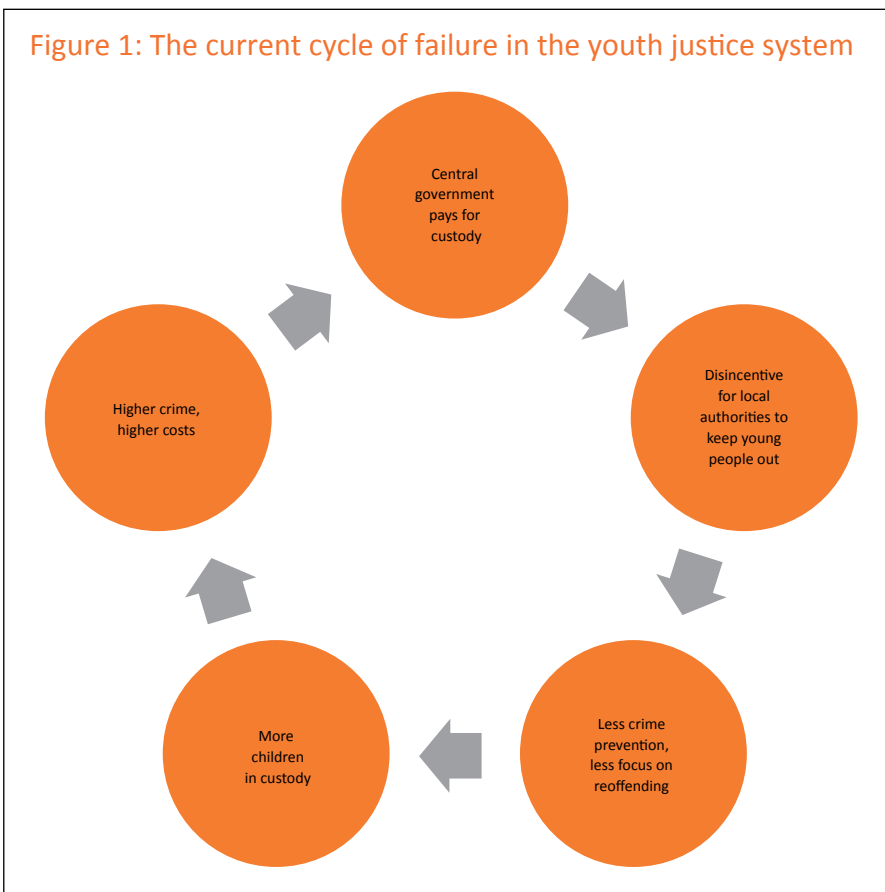
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# Executive Summary

The fact that central government alone bears the cost of imprisoning young people has created a cycle of failure in our youth justice system. It means that local authorities have nothing to lose financially when a young person is sent to prison. In fact, they can actually gain, no longer having to provide expensive services such as foster care, special educational provision or community sentences for the most difficult and troubled young people. This creates a perverse incentive, because custody acts as ‘respite care’ for local authorities and their agencies, thereby discouraging both short and long term efforts to prevent youth crime and keep young people out of prison.

Figure 1: The current cycle of failure in the youth justice system



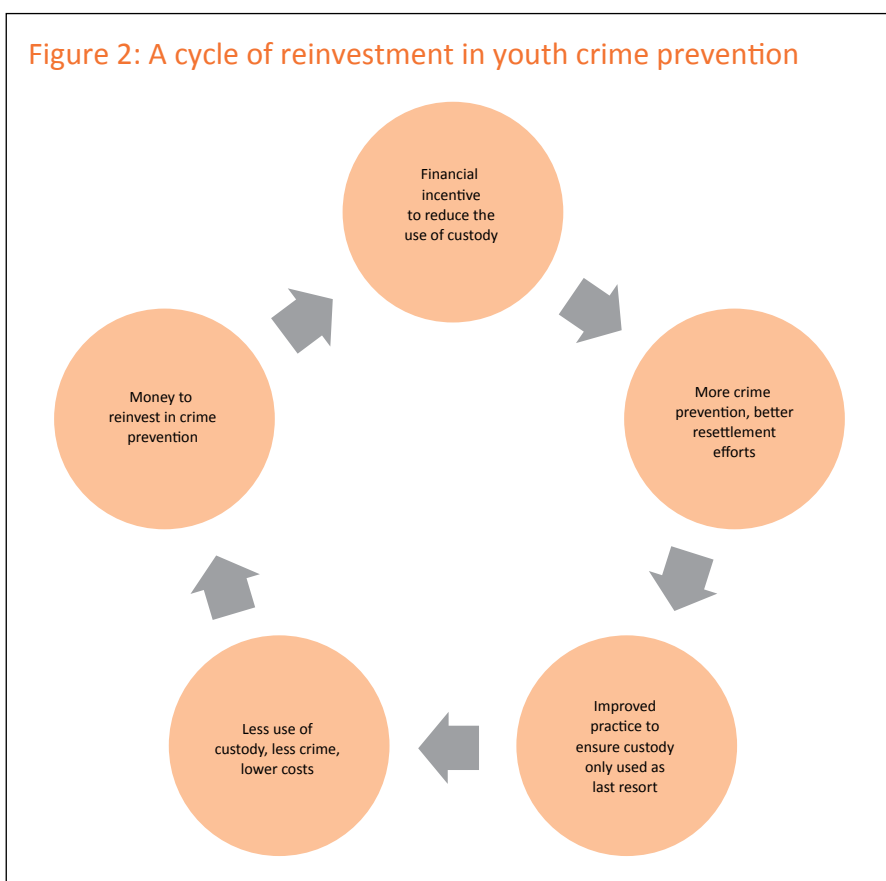
The official cost of providing these custodial places is significant – it has cost over £2 billion since 2000. But in fact, as the Youth Justice Board has recently admitted, the true costs of custody are much higher than officially stated. It is clear that youth custody numbers here are very high, with more young people in prison in England and Wales than in France, Germany, Austria, Ireland, Portugal and the Netherlands put together. While value judgments about the

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‘right number’ of young people in prison are outside the scope of this report, it is vital that there is a consistency of approach. Every local area should be taking every possible step to prevent youth crime, to ensure that custody is used only in appropriate circumstances, and then to prevent reoffending for those who do end up in prison. But, as this report shows, we currently have what can only be described as a postcode lottery of youth justice in England and Wales. As the maps contained in this report show, the concentration of young people in custody across the country differs tremendously between local areas. In Merthyr Tydfil and Hackney, around one in every 400 young people is in prison – the equivalent of two in every secondary school. But in Solihull and Northumberland, the figure is more like one in every 10,000.

Likewise, comparisons of areas with similar crime rates reveal striking differences in the concentration of young people in custody. If every local area with a high custody rate were to reduce it to that of its most similar area, the youth custody population would fall by 566 places – around a quarter. This would save the Youth Justice Board alone almost £50 million a year (and probably much more if the true costs of custody were known). To put this in context, £50 million a year is more than double the annual central budget provided to youth offending teams for crime prevention. Moreover, the National Audit Office estimates that wider savings through reduced crime of more than £100 million a year would be made if just one in ten young offenders could be prevented from going to prison. Preventing one in four young people from going into custody, as this report suggests is possible, would therefore save £250 million. If savings of this magnitude were realised and the money was reinvested in prevention, the impact on youth crime could be dramatic.

Figure 2: A cycle of reinvestment in youth crime prevention



The Government's target-driven approach to reducing the numbers of young people in custody has simply not worked. Almost every target has been missed and the most recent period, with a target for a 10% reduction in the youth custody population, saw a rise in custody numbers of around 8%. This failure is also reflected in the fact that not a single local authority has chosen to include a target to reduce the numbers of children in custody as part of their local area agreement (a mutually agreed set of indicators on which the overall performance of a local authority is gauged). But the target-driven approach is also fundamentally flawed: the right way to reduce the custodial population in the long term is to *reduce crime*. As this report argues, the way to do this is to remove the perverse incentive which is at the heart of the current youth justice system and allow the savings derived from lower use of custody to be reaped by local authorities and their agencies. Reinvesting these savings in measures to prevent youth crime will create a cycle of reinvestment.

“ The Government's target-driven approach to reducing the numbers of young people in custody has simply not worked ”

While there was discussion in government in 2008 about whether local authorities should foot the bill for youth custody, nothing has yet happened because there appears to be no agreement about how it should work. This report suggests a way forward – one which is viable in the current economic climate and which could reap significant benefits in the fight against youth crime.

## Recommendations

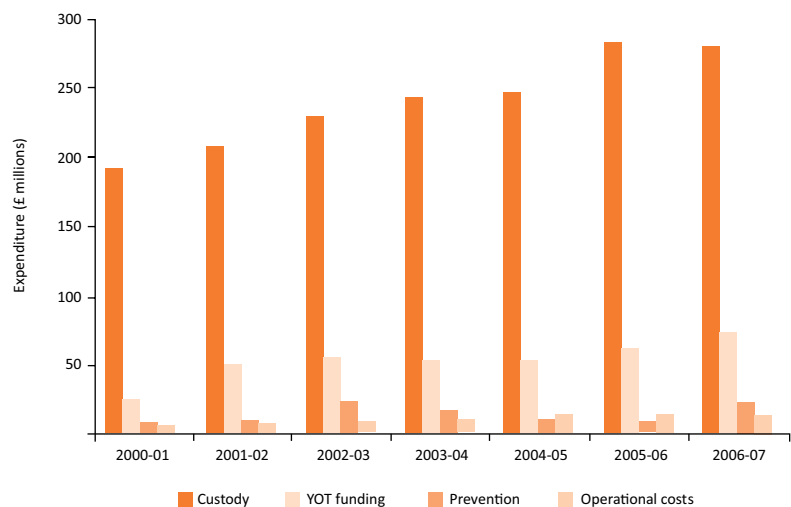
- **Local authorities should foot the bill for youth custody places.** This would remove the perverse incentive which currently pervades the system.
- **As a result of these reforms, the youth custody population will fall. The Government should therefore aim to close one (or more) of the seventeen Young Offender Institutions or convert one (or more) to an adult prison.** Closing a YOI or using it to alleviate overcrowding problems in the adult estate will ensure that the significant savings recouped locally are realised centrally.
- **Local authorities should be given full control of the budgets for youth custody.** The aim of these reforms should be ambitious – to pave the way for a radical new approach to youth justice in England and Wales. Giving local authorities full control of their budgets will provide significant opportunities for new kinds of institutions which are focused on outcomes rather than simply warehousing young people. This could involve the pooling of budgets for community provision with budgets for custodial provision, building upon the multi-agency approach and local infrastructure already in place through youth offending teams. It will mean that local authorities become responsible for allocating resources for prevention, punishment and rehabilitation activities – encouraging a holistic and locally-focused approach to dealing with youth crime in their respective areas.

# The current system

The Youth Justice Board (YJB) has had sole responsibility for purchasing and maintaining custodial places for young people since 2000. Providing custodial places is very expensive: official figures indicate that the average annual cost of a placement in custody in 2007-08 was £75,750. These costs range from an average of £55,018 in a Young Offender Institution to £206,184 in a Secure Children's Home. However, a recent letter from the Chair of the YJB sent to local councils across the country revealed that the figures for Young Offender Institutions do not include "substantial other costs associated with custody" such as escort costs, advocacy and other programmes.<sup>1</sup> The true cost is therefore even higher than official figures suggest.

The YJB spends over £300 million – and consistently around two thirds of its budget - on the 6% of young offenders who receive custodial sentences.<sup>2</sup> This is over 50% more than was spent in 2001.<sup>3</sup> In total, more than £2 billion has been spent on providing custodial places since 2000, while at the same time crime prevention programmes have been severely underfunded - with just £100 million spent on measures to prevent youth crime between 1999 and 2007.<sup>4</sup> In fact, just 5% of the overall YJB budget is spent on prevention, despite the fact that the body has successfully developed a number of effective prevention programmes which are delivered by local youth offending teams.

Figure 3: Youth Justice Board spending since 2000<sup>5</sup>



1 Letter dated 23rd April 2009, unpublished

2 Youth Justice Board Annual Report and Accounts 2007/08

3 *Ten years of Labour's youth justice reforms: An independent audit*, Centre for Crime and Justice Studies, 2008

4 *Towards a Youth Crime Prevention Strategy*, p12, March 2007, Youth Justice Board

5 Ibid.

It is clear that spending on enforcement is out of kilter with spending on prevention. The challenge for both central and local government is how to move resources upstream – to ensure that the right measures are targeted as early as possible on those ‘on the cusp’ of offending.

### The need for custody

It will always be necessary to lock up some young people. Being young is no barrier to being a dangerous or persistent offender and it should be no barrier to facing the consequences of wrongdoing. The youth justice system in England and Wales rightly reflects this, recognising the need to give magistrates and judges the necessary tools to protect the public and punish serious offenders.

In May of this year, 2,076 young people were serving custodial sentences, with an extra 611 held on remand.<sup>6</sup> That is more than in France, Germany, Ireland, Austria, Portugal and the Netherlands put together.<sup>7</sup>

Value judgments about whether England and Wales has an ‘appropriate’ number of young people in prison are difficult to make and outside the scope of this report. However, it is crucial that there is some consistency of approach in the way local areas deal with young offenders across the country. If some young people are going to prison when this outcome is avoidable or unnecessary, this is bad for them and bad for society.

With this in mind, it is worth pointing out that there is an important background story for many of these young people. Most have a myriad of problems, sometimes through no fault of their own, and many of these problems have undoubtedly contributed to their offending behaviour. Recent analysis by the Youth Justice Board and Her Majesty’s Inspectorate of Prisons reveals that 30% of young men and 37% of young women in custody report being in care at some point in their lives<sup>8</sup>, with one in three girls and one in twenty boys reporting having been sexually abused.<sup>9</sup> 90% of young men and women in prison have used illegal drugs and nearly all have been excluded from school.<sup>10</sup>

These problems become entrenched and create a cycle that is difficult to break: 60% of young men and 62% of young women in prison said that they had had been in custody more than once, with 6% of young men and 9% of young women having been in custody more than five times.<sup>11</sup>

### Numbers in custody

The large number of young people in custody is not a new phenomenon. Despite small fluctuations in the numbers of young people in prison throughout any given year, the overall youth custody population has been relatively stable from 2000 to 2004 but has since increased significantly (as can be seen from the graph below). On a year-to-year measurement, the population has only fallen below 2,800 once since 2001 (between March 2005 and March 2006).

“ If some young people are going to prison when this outcome is avoidable or unnecessary, this is bad for them and bad for society ”

6 Weekly children in custody statistics, Howard League, May 24th 2009

7 The total number of children in custody for these countries in 2007 was 1888, Council of Europe Annual Penal Statistics, Survey 2007, Strasbourg 24th March 2009, pp 43-44

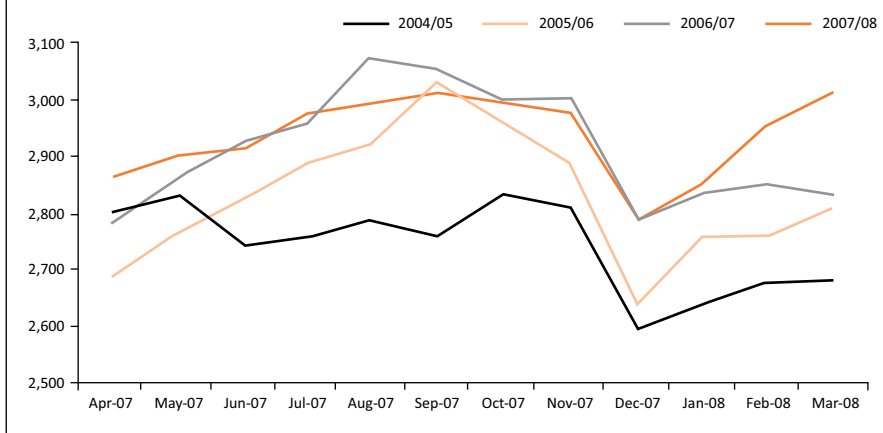
8 Children and Young People in Custody, YJB and HMIP, 2004-2006

9 Ibid.

10 Ibid.

11 Children and Young People in Custody, YJB and HMIP, 2006-2008

Figure 4: Under 18 secure estate population – year on year monthly trends<sup>12</sup>



### What are young people locked up for?

The majority of young offenders are sentenced to custody for serious offences. Indeed, magistrates and judges stress that custody is only used as a last resort. In 2007/08, the average secure population (including those on remand of the youth estate) was 2,932. On average, half of these were imprisoned or remanded for either violence against the person, sexual offences, robbery or burglary.<sup>13</sup>

However, a significant number (around 15%) were imprisoned for breach of a statutory order (normally a community sentence). This is more than are sentenced for robbery and three times as many than are sentenced for theft.<sup>14</sup>

The relative stability of the year-to-year population figures, together with the fact that there are nearly 3,500 places available, means that the youth custody estate does not have the same periodic overcrowding problems which so dominate the adult prison estate.

However, the lack of a capacity crisis does not mean that this status quo is acceptable. The Government accepts this – it has set targets again and again for reducing the custodial population. Unfortunately, little has been achieved.

### Targets haven't worked

The Youth Justice Board has sought to reduce the numbers of young people in custody since its inception in 2000. This is laudable and quite understandable given that the vast majority of its budget is spent on the small number of young offenders who are sentenced to custody. This allocation of resources is not the fault of the YJB, which is forced to react to the failure of wider preventative efforts, criminal justice sanctions and social policy. The YJB's liability for the custodial budget means that any ambition for sustained investment in evidence-based prevention is severely hampered.

A number of targets have been set for both the use of remand and the use of custody in recent years but very few have been met. Indeed, the most recent target was missed by a very long way.<sup>15</sup>

<sup>12</sup> Youth Justice Board Annual Workload Data 2007/08

<sup>13</sup> Youth Justice Board Annual Workload Performance Data 2007/08

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ten years of Labour's youth justice reforms: an independent audit*, p48 Centre for Crime and Justice Studies, 2008

Initially, targets were set to reduce the use of secure remand by 15% between 2001 and 2005 and to reduce the use of custody by 10% in the same period. In 2003, the target was modified, becoming a single target to reduce custody and remand by 10%, but with a new baseline of October 2002. It was modified again in 2004, with the same aim but a new baseline of October 2003 (with a more ambitious deadline of March 2006). Then the target was changed again in 2005, with the aim to reduce numbers by 10% between March 2005 and March 2008.<sup>16</sup>

Aside from meeting the target for the period between October 2002 and March 2005 (when a fall of 16% was recorded – in part due to the end of the Street Crime Initiative<sup>17</sup>), the targets have all been missed. As stated, the population in custody has remained broadly stable since 2001. The most recent period targeted for a reduction in custody numbers (March 2005 to March 2008) saw an 6% increase in the number of young people in custody – the first time that there has been an overall increase in custodial numbers in a period where the YJB was aiming to achieve a reduction.

It is little surprise that simply setting targets, without giving local areas the necessary incentives or adequate funding in crime prevention programmes to achieve it, has failed.

### More targets won't work

The Government's youth crime action plan, published in 2008, adopts a similar target-driven approach. While there is no longer a headline target to reduce the use of custody, the action plan does stress the existence of a relevant target for local authorities. The plan states that "the new focus on youth offending in local area agreements should provide a good context for this (improving outcomes and for children and reducing crime). Ultimately this should lead to fewer children receiving custodial sentences; since custodial provision is very expensive, lower use would result in savings that could be used for earlier intervention".<sup>18</sup> Of course though, under the current system, no savings accrued through lower use of custody would be retained by the local authority.

NI 43 – a measure which local authorities can choose to include as part of their local area agreement (a mutually agreed set of indicators on which the overall performance of a local authority is gauged) – is a target to reduce the number of young people within the youth justice system who receive a conviction in court and are sentenced to custody. However, to date, not a single local authority has chosen this indicator to be included in their local area agreement.

Despite this, it is rumoured that the Government will seek to reward local authorities financially for meeting this target. While this would be a small step forward, it is likely to be viewed by most a half-measure that will not get to the root of the problem.

Is the high custody population indicative of a widespread failure to prevent youth offending and social problems? Is there more that local and central government could be doing to prevent the use of custody? The answer, on both counts, is yes. The point is demonstrated aptly by the large disparities between local areas in the numbers and proportion of children sentenced to custody.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Youth Crime Action Plan, p57, Home Office, Ministry of Justice, Department for Children Schools and Families, 2008

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# Comparing the number of young people in custody by local area

If magistrates and judges only sentence young people to custody as a last resort, how can the huge disparities between local areas be explained? There are significant differences in the numbers of children sentenced to custody – for example, just two children in Windsor and Maidenhead received custodial sentences in 2007-08 compared with 280 in Wessex. Similarly, the custody rate (the percentage of offenders coming before the court who are sentenced to custody) also differs widely across England and Wales – ranging from 1.7% in Pembrokeshire to 12.6% in Merthyr Tydfil during the same period.<sup>19</sup>

This is not, however, the full story. Disparities between local areas in pure custody numbers are often presented as evidence that the ‘worst-performing’ areas are those youth offending team areas which send the most numbers of children to prison. However, such analysis does not take account of the different populations of different areas. Likewise, using the custody rate as a definitive guide says little about the wider failures of crime prevention, as those areas with a high custody rate may also have more serious crime.

A better approach, it is suggested, is to analyse the custody numbers as a per capita ratio. Those with high per capita rates may have failures of crime prevention activities as well as poor practices with regard to courts and sentencing. The maps below display the concentration of children in custody across England and Wales. The range of concentration is striking. In Lambeth and Hackney, around 1 in every 400 children was in prison in March 2009. In Wiltshire, just 1 in 16,000 was in custody. There is also a map showing the costs of youth custody by area projected over a year, illustrating that some areas cost the taxpayer more than 50 times the cost of other areas.

## Comparing like with like

A further step is to undertake like-for-like comparisons, comparing youth offending teams with similar socio-economic characteristics and crime rates.

Since 2003, the Youth Justice Board has grouped youth offending team (YOT) areas into ‘families’- comparative groups of ten YOT areas, linked by statistical similarity. Each YOT area has nine ‘relatives’, listed in order of similarity, with the most similar area being the ‘closest relative’ and the ninth most similar being the ‘most distant relative’. The YJB’s initial groupings, based largely on deprivation indices, were found to be ‘crude and lacking flexibility’,<sup>20</sup> but the calculations have since been altered to incorporate a wider variety of variables more closely correlated with crime rates.

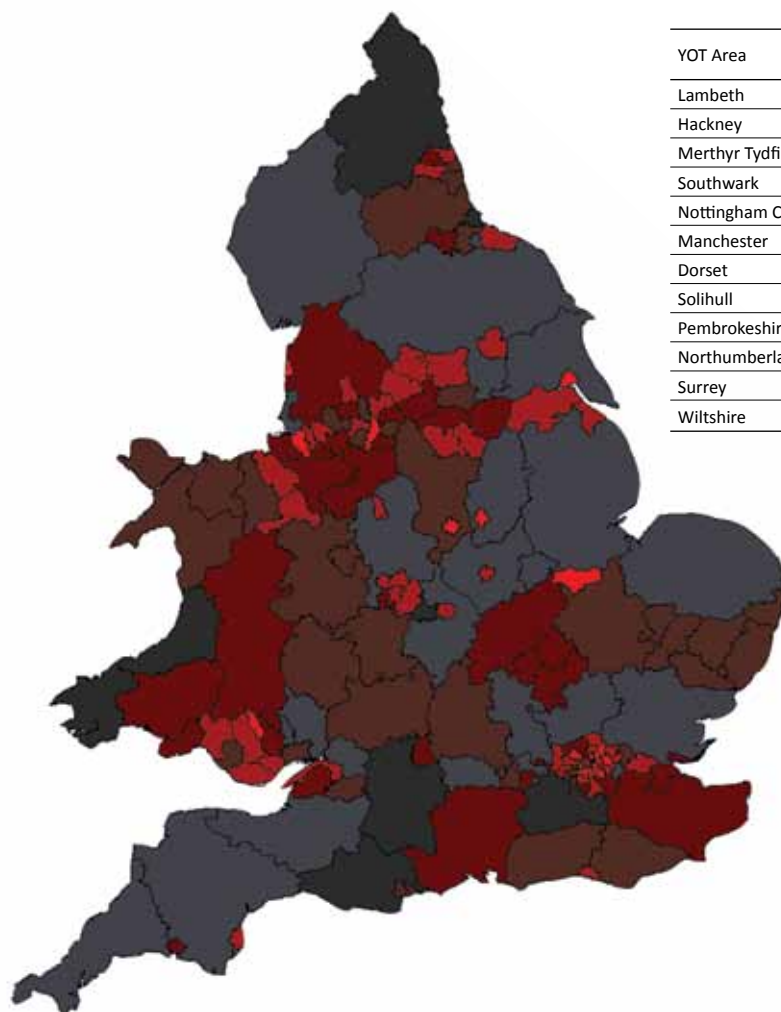
The variables currently taken into account when assembling YOT families now include information on population, housing, socio-economic indicators and commercial composition of the area, including:

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<sup>19</sup> Figures provided to Policy Exchange by the Youth Justice Board

<sup>20</sup> YOT families methodology 2005-6; provided by the YJB to Policy Exchange.

Figure 5: Concentration of young people in custody by area (March 2009)



YOT Area	Number of 10-17 year olds	Custody population	Per capita ratio
Lambeth	20,723	52	1:399
Hackney	19,484	47	1:415
Merthyr Tydfil	6,188	14	1:442
Southwark	21,457	48	1:447
Nottingham City	25,585	48	1:533
Manchester	41,396	71	1:583
Dorset	42,025	4	1:10506
Solihull	22,828	2	1:11414
Pembrokeshire	12,271	1	1:12271
Northumberland	30,304	2	1:15152
Surrey	109,191	7	1:15599
Wiltshire	48,279	3	1:16093



Figure 6: Concentration of young people in custody in London (March 2009)



YOT Area	Number of 10-17 year olds	Numbers in custody	Per capita ratio
Lambeth	20,723	52	1:399
Hackney	19,484	47	1:415
Southwark	24,457	48	1:447
Islington	13,762	23	1:598
Brent	23,781	39	1:610
Barnet	32,040	11	1:2913
Kingston upon Thames	13,555	4	1:3389
Havering	24,290	5	1:4858
Richmond upon Thames	14,909	3	1:4970
Bexley	24,328	4	1:6082



- output area density;
- number of 10-17 year olds and population sparsity;
- % of single adult households;
- % of terraced households;
- % of student households;
- % claiming unemployment-related benefits;
- % of migrants and an overcrowding index; and
- number of bars per hectare and number of retail outlets.<sup>21</sup>

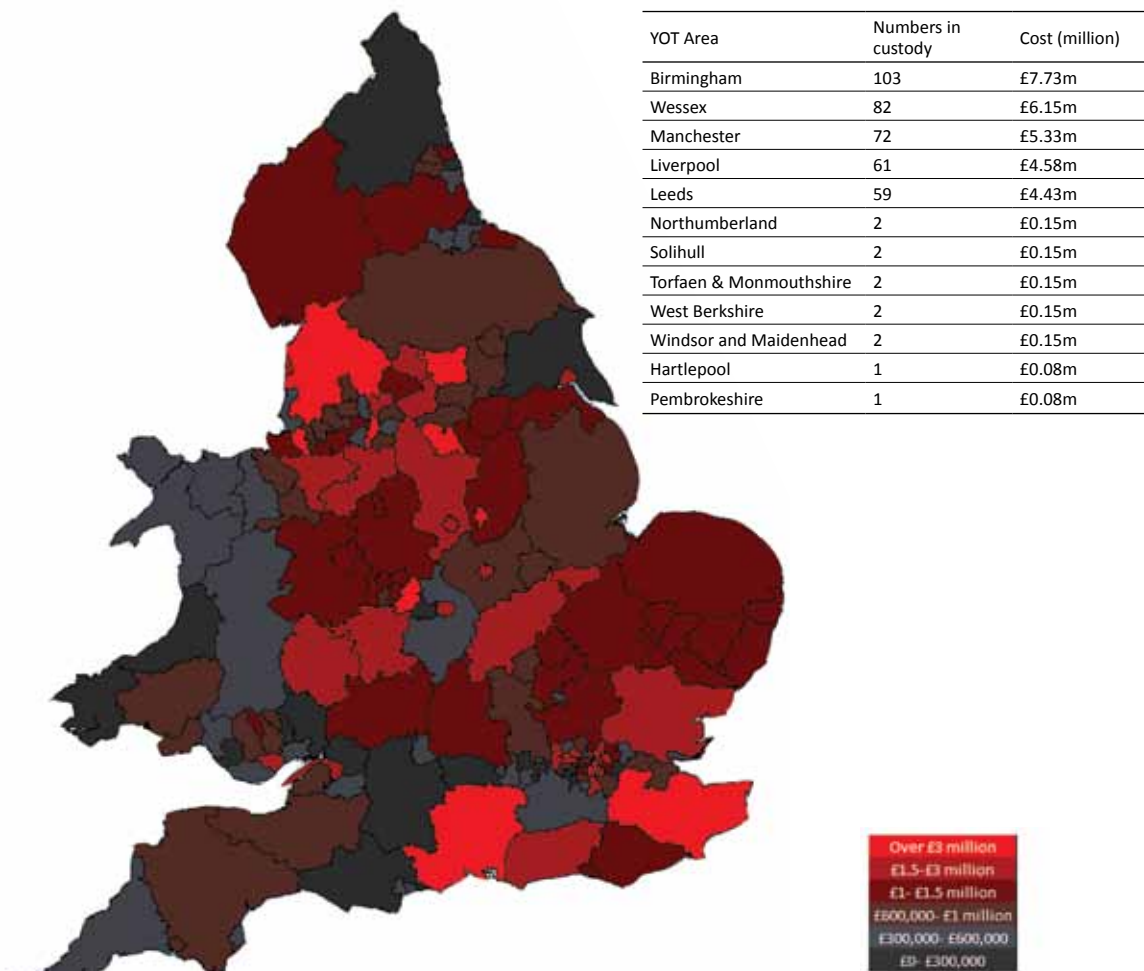
In total, 15 variables are taken into account when grouping YOTs into families, and the YJB believes that its method of clustering YOTs is now ‘fairer than any of the other currently available fixed family methods’.<sup>22</sup>

The families system allows like-for-like comparisons to be made within between YOT areas. Policy Exchange has calculated the per capita custody ratio for each YOT area (based on a March 2009 ‘snapshot’ of the custodial population), and has used the YOT families criteria to compare the per capita ratios

21 Ibid.

22 Ibid.

Figure 7: Costs of young people in custody by area (March 2009)



of similar YOT areas. For example, according to the YJB's formula, the closest relative of the Welsh YOT area of Merthyr Tydfil is Caerphilly and Blaenau Gwent, another YOT in Wales. A comparison of per capita custody ratios shows that youth offending relative to population size is far more prevalent in Merthyr Tydfil than in its closest relative: 1 in every 442 people aged 10-17 in Merthyr Tydfil are in custody, while in Caerphilly and Blaenau Gwent the ratio is only 1 in 2,667.<sup>23</sup>

By applying the custody ratio of Caerphilly and Blaenau Gwent to the population figure of Merthyr Tydfil, we can calculate the potential decrease in Merthyr Tydfil's youth custody population, were it able to improve its custody ratio to match that of its closest relative. In this case, Merthyr Tydfil's custody population would fall from 14 to an 'alternative custody population' of just 2 - saving approximately £900,000 per year.<sup>24</sup> The table below shows the 10 YOT areas with the greatest percentage discrepancy between their own per capita custody ratio and that of their closest relative.<sup>25</sup> It also includes the 'alternative custody population' derived by applying the custody ratio of each YOT's closest relative to the population of the original YOT.

Figure 8

YOT area	Numbers in custody	Per capita ratio	Closest relative	Per capita ratio	Alternative custody population
Kent	55	1: 2705	Essex	1: 5339	28
Lancashire	54	1: 2364	Kent	1: 2705	45
Newham	39	1: 687	Greenwich	1: 1318	20
Brent	39	1: 610	Ealing	1: 1282	19
Cardiff	30	1: 1051	Plymouth	1: 2426	13
Bristol	30	1: 1141	Plymouth	1: 2426	14
Lewisham	30	1: 771	Greenwich	1: 1318	18
Derby City	29	1: 837	Stoke-on-Trent	1: 1586	15
Kingston upon Hull	28	1: 959	Coventry	1: 1420	19
Croydon	28	1: 1281	Enfield	1: 1706	21
Total	362				212

As the table shows, if the ten YOT areas listed above achieved the same per capita custody ratio as their closest relative, the total number of young people in custody in those areas would fall by 150 - representing a total saving of £11,246,310 each year.

### Total cost savings

To extend this further, it is possible to calculate the alternative custody ratio for all YOT areas. In 2009, there were 79 areas with a custody ratio inferior to that of their closest relatives; if each matched their closest relatives' custody ratios, the custodial population would fall by around 566, saving £42,434,092 per year. If the exercise is repeated using March 2007 and March 2008 'snapshot' figures, the total potential savings over all three years amount to £128,053,174. This is more money saved over three years than was spent on prevention activities by youth offending teams between 1999 and 2007. If these savings were reinvested in crime prevention, the impact on youth crime could be dramatic.

Why do these disparities exist? What is it that youth offending teams, courts and local authorities are doing in areas with low custody rates that other areas aren't?

<sup>23</sup> YOT families; provided by the YJB to Policy Exchange.

<sup>24</sup> Cost per youth in custody is estimated at £75,000 per annum

<sup>25</sup> Ceredigion has been excluded as there were no youths in custody in that area in March 2009

The answer is that there are many practical steps which could be taken to reduce high custody rates and their associated costs. But there is no incentive for local authorities to take these steps because central government pays for the costs of youth custody. As will be demonstrated, the key to ensuring that these steps are actually taken is to remove this financial disincentive and to allow local authorities to reap the rewards of lower incarceration and reinvest the savings in crime prevention and better support for troubled young people in their areas.

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# The consequences of central government paying for youth custody

## No incentive to keep young people out of prison in the long-term

The first consequence of central government paying for youth custody placements is that some young people are being sent to prison when this outcome was avoidable and when steps could have been taken earlier by responsible agencies to prevent a sentence of custody. These failures can occur at all stages of a child's life; the Government itself has admitted these failures. The youth crime action plan, published in summer 2008, stated that young offenders in the criminal justice system "are frequently well known to local services through instability at home or in education and have needs that have not been met earlier. By the time these children receive community sentences or even custodial sentences, they tend to be disengaged from mainstream services and lack positive links to their communities, resulting in high rates of re-offending."<sup>26</sup>

A prime example is the care system. If, for example, a boy has serious problems in his home life, is truanting from school and beginning to come to the attention of the police, his problems may be such that he needs to be taken out of his troubled home environment and put into care. Now, the local authority has a decision to make: to make a care order and place him with foster parents or in a children's home – with all the costs this entails for the local authority – or to deal with the problems in another, cheaper way and wait and see if they rectify themselves. In the meantime, the young person may become further involved in crime and may eventually end up in court for a serious offence. If he ends up in custody, no costs will be borne by the local authority, which may be able to focus resources on other cases which may be resource-intensive.

No social worker or local authority figure should be put in this position. The decision needs to be made simpler, both to ensure the best outcome for the child and the best long-term outcome for society (not least in terms of reduced crime). The existence of this perverse incentive is even more worrying in light of recent accusations that some councils appear to be 'capping' the number of care home places, with the numbers of children placed in residential care showing no change from year to year in 16 councils – leading some to question whether the number of places are being artificially capped.<sup>27</sup> The average cost of foster care or a placement in a children's home is much cheaper than the costs of custody (£759 a week<sup>28</sup>, compared with £1450 for custody). If local authorities had to foot the bill for custody as well as care, decisions taken on the ground today may well be taken differently tomorrow.

26 Youth Crime Action Plan, p57, Home Office, Ministry of Justice, Department for Children Schools and Families, 2008

27 Councils 'capping' care home places, Children and Young People Now, 25th June 2009

28 Personal Social Services Expenditure and Unit Costs, England, 2006-07, Office for National Statistics and NHS

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The perverse incentive is displayed even more starkly when you consider the position of a young person already in care. Again, if the child offends and goes before a court, what incentive is there for the key social worker to attend court, to persuade the judge that problems are being rectified, that alternatives to custody should be considered and that steps are being taken to prevent further offending? The system is structured in such a way that custody can act as a kind of respite care – a cost-saving for local authorities. These decision making trade-offs are simply an inevitable feature of the current system and need to be eliminated.

### No incentive to keep young people out of prison in the short-term

Aside from individual decisions which could and should have been taken earlier – before problems became endemic - there are also a number of measures which could be taken to ensure that there is a more consistent approach to criminal proceedings. If the measures described below were commonplace across the country, it is likely that a significant number of prison places would become redundant, with savings available to supplement efforts to reduce crime at much earlier stages, creating a cycle of justice reinvestment.

A study for the Prison Reform Trust analysed the practices in Newcastle, which has a very low custody rate compared with its closest counterparts (those within its YOT family). The purpose of the study was to examine the attitudes, systems, policies, practices and relationships that influence the level of custody and to learn lessons which could be applied elsewhere. A similar study looked at a similar Northern city (within the same YOT family) which had a poor custody rate, allowing 'bad practice' to be identified.<sup>29</sup>

Policy Exchange has conducted a number of structured telephone interviews with youth offending team managers, which served to underline many of the issues highlighted in the studies.

The studies show that a number of factors can have a large bearing on the decision to sentence young people to custody and reveal a number of practical steps that could be taken to make sure that custody is used only as a last resort. The steps include:

**Diversion from court:** Diversion from court does not mean young offenders 'getting away' with wrongdoing. Rather, it is an approach which recognises that many young people commit minor crimes (particularly during their early to mid teens) where a court appearance and a possible criminal record would not be an appropriate response. The youth justice system allows for the use of pre-court disposals, including reprimands, final warnings and restorative justice tools to promote victim satisfaction.

A high level of diversion from court has been shown in various studies to result in lower levels of custodial sentencing.<sup>30</sup> In Newcastle, police are located within the youth offending team and undertake the diversionary work, so they are responsible for making decisions about reprimands, final warnings and reparation to victims. Relationships between the police seconded to the YOT and the YOT staff were reported to be very good and any issues were discussed and resolved quickly. Telephone interviews conducted for this report supported the notion that a good diversionary policy was likely to go hand in hand with a low custody rate.

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<sup>29</sup> *Studies into differential custodial sentencing in the youth court*, Chris Stanley for the Prison Reform Trust

<sup>30</sup> For example, in the Nacro briefing paper, *Reducing custody: a systemic approach*

It is notable that despite a desire to use diversionary tools where appropriate, in Newcastle there is a low use of fixed penalty notices – which might otherwise be seen as the easy option. But Newcastle’s police officers are encouraged to engage young people rather than simply issuing tickets.

By contrast, in the comparison area, magistrates and judges cited examples of cases that had actually been sent back by the judiciary to the police for a final reprimand or warning because they were not considered appropriate for the court to hear.

**Ensuring suitable bail packages:** If sufficient bail packages are not presented to the court, it is more likely that the court will decide to remand young people to custody awaiting trial or sentence. This leads to increased use of custody for remand purposes, but also makes it more likely that a magistrate will hand down a sentence of custody at a later date.

In Newcastle, a dedicated team of YOT staff service the remand court that sits every day. Magistrates were reported to have confidence in the bail supervision and support service provided by the YOT.

In the comparison area, it was reported that while bail supervision was adequate, there was insufficient accommodation for children and young people who were deemed homeless at the time of their court appearance. Only unsuitable bed and breakfast establishments were available. Moreover, there was an impression that the bail support team had become detached from the youth offending team and were not responding quickly enough to put together bail and support packages on the morning of a court appearance, resulting in unnecessary use of custody.

**Building trust and confidence with the judiciary:** The relationship between the youth offending team and the court is absolutely crucial. If the court has confidence in the work of the youth offending team, magistrates and judges are more likely to favour using alternatives to custody in the knowledge that they are robust and credible. This was consistently underlined during the various interviews with youth offending team managers and staff conducted for this report.

In Newcastle, those involved described this relationship as the single most important factor which contributes to their low level of custody. If magistrates trust the pre-sentence report and the sentence recommended by the youth offending team and they are aware of the outcomes of their sentences (for example, the local reoffending rates for different sentences), lower custody rates are possible. But this relationship is not something which happens overnight. A dialogue has to be built over months and years and a real level of trust developed. It means the Chair of the Youth Court and the YOT managers knowing each other. There should be regular phone conversations - perhaps querying a pre-sentence report, giving feedback on a case, or asking about the outcome of a particular young person. Magistrates should know the YOT staff who attend court and should give feedback on their pre-sentence reports through a form, or better still, in person in the court. Above all, avenues of communication must be open, accessible and regularly utilised. In addition, every effort should be made to ensure that magistrates and judges are engaged and feedback is being exchanged both ways.

One often overlooked factor is the importance of notifying magistrates of successful outcomes, which are so rarely seen by the judiciary. So in addition to

bringing back cases where community orders have been breached, in Newcastle, sentences where good progress has been made and positive outcomes achieved are also brought back before the court. This is a concrete, sensible step towards building confidence in alternatives to custody.

In the comparison area, magistrates complained of a lack of feedback on outcomes of cases, a lack of opportunities for visits or open days so that magistrates could see the work of the youth offending team, and one particularly serious deficiency – the authors of pre-sentence reports not attending court on the day to answer questions about the report – something which would greatly increase the confidence of the court in considering alternatives to custody.

**Ensuring the authors of pre-sentence reports (PSRs) attend court:** Magistrates rely on PSRs to give information on the offender and the offence and to make a well-argued, clear proposal for an appropriate sentence. In Newcastle, PSRs are held in high regard by the magistrates, who report a high level of confidence in the recommendations. They appreciated the menu of sentencing options provided, followed by a firm proposal. There was confidence that the PSR authors would always say so if custody was seen to be inevitable.

confidence that the PSR authors would always say so if custody was seen to be inevitable.

**Holding a multi-agency serious case review for every custodial sentence:** In September 2007, a custody panel was formed in North Hampshire to look at the cases of all children under 18 sentenced to custody in the area. Formed with representatives of the Youth Offending Team, Children's Services and the voluntary sector, the panel reviewed each case to see what action might have been

taken to avoid custody and to give feedback to those working on the case. In addition, the panel sought to inform and improve practice among all agencies and aggregate data relating to the use of youth custody.

Annual custody figures demonstrated a 42% drop in the numbers of children being sentenced to prison since the pilot initiative was introduced. In 2008, 45 children were sentenced to prison in North Hampshire, compared with 78 children sentenced to custody in the previous year.<sup>31</sup>

Now three more local authorities have established similar custody panels (Luton, Warwickshire, Stockton-on-Tees) and four plan to create a custody panel as a result of the pilot (Nottinghamshire, Staffordshire, Waltham Forest and Sunderland).

These are just some of the practical steps which could be taken to ensure that the approach to deciding whether to send a young person to custody is consistent. Placing a burden on local authorities for the costs of custody would go some way to furthering this best practice.

### No incentive to fund crime prevention programmes

Another important consequence of the costs of custody being borne solely by central government is that not enough early intervention and crime prevention is taking place locally. As Policy Exchange illustrated in *Less Crime, Lower Costs*<sup>32</sup>, during a

“ The fact that central government bears the costs for youth custody places makes it difficult for local agencies and voluntary groups to make the case at a local level for increased and sustained investment in the kind of programmes that would make a real difference ”

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31 Howard League briefing paper on the Custody Panel, April 2009

32 *Less Crime, Lower Costs: Implementing effective early crime reduction programmes in England and Wales*, May 2009, Max Chambers, Ben Ullmann, Professor Irvin Waller, edited by Gavin Lockhart, Policy Exchange, May 2009

recession - when crime is likely to rise and public money is tight - it is crucial that resources are directed towards the most cost-effective methods of fighting crime. When it comes to young people, the evidence about what works and what is cost-effective is very strong. The key is to fund and implement programmes which are designed to tackle 'risk factors' – those circumstances or life experiences which can lead young people towards criminal behaviour. Children who become persistent offenders tend to grow up with negative family and school experiences, such as:

- being born into a family in relative poverty and inadequate housing
- being brought up with inconsistent and uncaring parenting, including violence
- having limited social and cognitive abilities
- having behavioural problems identified in primary school
- being excluded from, or dropping out of, secondary school
- living with a culture of violence on television and in the neighbourhood
- being frequently unemployed and with relatively limited income as a young adult.<sup>33</sup>

The greater the number of risk factors in a young person's life, the greater the chances that he or she will become an offender. A Home Office study has found that although only 6% of boys under 18 had at least four risk factors, over three-quarters (85%) of them had committed at least one offence at some point in their lives, and more than half (57%) were currently persistent or serious offenders.<sup>34</sup>

More than 40 years of scientific research has established a body of knowledge that criminal justice policymakers and practitioners can draw upon to develop and deliver programmes that are both effective and cost-effective. Some reap rewards of as much as \$25 for every dollar invested. The potential savings are substantial, especially as research from the United States indicates that the most prolific young offenders can cost the taxpayer up to \$5.6 million by the time they reach the age of 26.<sup>35</sup> The National Audit Office has estimated that preventing just one in ten young offenders from ending up in custody in the UK would save £100 million a year.

The Youth Justice Board has made some significant progress in designing programmes to prevent youth offending. Examples include the youth inclusion programmes (YIPs), targeted at 13 to 16-year-olds, and youth inclusion and support panels (YISPs), targeted at 8 to 13-year-olds. As the Home Affairs Select Committee has stated, "all the indications are that these schemes are extremely successful and cost effective in terms of their impact on anti-social behaviour."<sup>36</sup>

However, despite the evidence that these schemes have been successful (particularly YIPs), their funding has been extremely limited: only the youth inclusion programme received significant medium-term funding (around £7 million a year between 1999 and 2005).

The Youth Justice Board estimated that this limited funding has restricted its ability to promote the involvement of YOTs in prevention work with young people before they entered the criminal justice system, which has been uneven as a result.<sup>37</sup>

In *Less Crime, Lower Costs*, we recommended that an extra £200 million a year should be spent by youth offending teams, children's services, primary care trusts, schools and voluntary organisations on programmes which are proven, both here and abroad, to reduce crime and reap significant savings for the criminal justice system and to reduce the number of crime victims.

33 Waller I, *Less Law, More Order: the Truth about Reducing Crime*, Greenwood Publishing, 2006. (Diagram adapted from the work of Sohail Husain)

34 <http://www.crimereduction.homeoffice.gov.uk/toolkits/py020204.htm>

35 Cohen M and Piquero A, "New Evidence on the Monetary Value of Saving a High Risk Youth", *Journal of Quantitative Criminology*, Vol 25, No 1, March 2009

36 Home Affairs Select Committee Fifth Report of 2004-05, TSO. Available at [www.parliament.uk/parliamentary\\_committees/home\\_affairs\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm)

37 *Towards a Youth Crime Prevention Strategy*, p12, March 2007, Youth Justice Board

The report recommended that this money should come from existing central government departments (by reallocating money which has been spent ineffectively on CCTV and Sure Start programmes which are not reaching the most disadvantaged). However, if investment by central government could be supplemented with extra funding at a local level, much larger reductions in crime are possible. But the fact that central government bears the costs for youth custody places makes it difficult for local agencies and voluntary groups to make the case at a local level for increased and sustained investment in the kind of programmes that would make a real difference – this needs to change.

Removing the financial disincentive could foster the kind of long-term planning, multi-agency cooperation and pooled budgets which are currently so lacking. There are councils like Nottingham and Birmingham seeking to make ‘the business case’ for investing money earlier in crime prevention in order to recoup savings later. Agencies within Birmingham City Council estimated that investing £16 million in early intervention programmes (targeted at families and children ‘at-risk’) could save the Council £80 million in cashable benefits over the next 15 years. If the Council also had to take into account the £8 million a year spent on young people from Birmingham being imprisoned, the case for this kind of ‘investing to save’ would be even more compelling.

### No incentive to prevent reoffending

The final consequence of the fact that the costs of custody are borne entirely by the central government is that there is no financial incentive for local authorities to prevent young people from ending up back in prison – to prevent reoffending and ensure that aftercare and resettlement efforts are of sufficient quality. The numbers of young offenders who do return are extremely high - 60% of boys and 62% of girls in custody have been in prison before.<sup>38</sup> Despite this, at a local level there appears to be a lack of focus on dealing with the problem. If the costs of incarcerating these young offenders were paid by local authorities, more action might be taken to prevent young people returning to custody.

The government’s latest figures assert that the proportion of juvenile offenders reoffending has fallen by 2.7% since 2000, to 37.5% in 2007.<sup>39</sup> However, it should be noted that the Government recently altered the way it measures reoffending by moving from a 2 year follow-up to a 1 year follow-up system – allegedly to provide a ‘more timely measure of reoffending’. Naturally, this has had the effect of reducing the headline rate of reoffending. In fact, rates of recidivism amongst young people remain unacceptably high. Figures released before the Government changed its method of measuring reoffending show that 79% of boys and 57% of girls aged 15-17 who are released from custody are reconvicted within 2 years.<sup>40</sup>

Furthermore, Ministry of Justice figures reveal that, on average, young offenders reoffended within as little as 126 days of release in 2007. Serious violence was committed within 144 days of release, while robbery was committed within 123 days of release. Drug import, export or production was committed within 119 days of release, and domestic burglary was committed within only 110 days of release.<sup>41</sup> Moreover, these figures refer to dates of offences for which the young offenders were reconvicted - it is likely that new offences took place much earlier. In any case, it is clear that many young offenders are rapidly turning to crime after being discharged from custody.

38 Young people in custody 2006-08, Youth Justice Board and HMIP

39 Ministry of Justice statistical bulletin (2009), Reoffending of juveniles: results from the 2007 cohort, May 2009

40 Home Office statistical bulletin (2006), Reoffending of juveniles: results from the 2004 cohort, June 2006

41 All figures from Ministry of Justice statistical bulletin (2009), Reoffending of juveniles: results from the 2007 cohort, May 2009

Examples collated by the Secure Accommodation Network (SAN) provide anecdotal evidence of the failure of local authorities to properly manage young offenders upon release. As the SAN states, while it can “demand and try to influence exit plans” for young offenders, “ultimately this role lies with the placing authority, Social Workers and the Youth Offending Team”.<sup>42</sup> The following examples illustrate cases where insufficient planning and a lack of inter-agency coordination have jeopardised the prospects of young offenders on their release:

- One in seven young offenders at Eastmoor Secure Unit had no accommodation plan in place by their final review.
- “C” had responded well to her time in St Catherine’s Secure Unit. The Local Authority was eager to move her on and chose an open placement “based on cost”. A member of staff from St Catherine’s accompanied C on a visit to the placement and expressed serious concerns over the existing peer group at the establishment. Nevertheless, the transfer took place. C absconded after one night and went missing for over a week before being returned to secure accommodation.
- “CS” was serving a Detention and Training Order at a Secure Unit, and earned early release through good behaviour. However, no placement was found for her. She had to be held beyond her release date, although her behaviour was “first-class”.
- “AW”, 16 years old on release, was on a three year custodial sentence for serious offences. Upon arrival at Orchard Lodge Secure Unit, he had a reading age of eight and was abusing both drugs and alcohol. He had suffered abuse at home and was 2 stone under weight. At Orchard Lodge he returned to his appropriate weight, undertook a substance abuse programme, and his reading age improved by 5 years. However, on the day of his release no accommodation or education had been arranged, and he had been removed from the school roll. He was eventually housed in a bed and breakfast. Within four weeks he had reoffended, still had no educational placement, and was once again using illegal drugs. He was later returned to a Young Offender’s Institution. The SAN states that “18 months work by a multidisciplinary team was undone within 4 weeks.”<sup>43</sup>

The above examples, and many others, demonstrate the failure of local authorities to properly arrange essential services for young offenders on release. The provision of suitable accommodation and education where required is vital if reoffending is to be prevented. There are of course cases where local authorities do make suitable and necessary provisions for young offenders being released from custody. However, on far too many occasions local authorities fail to fulfil their duties towards these young people.

The Government’s Youth Crime Action Plan 2008 includes proposals to cut youth reoffending, some of which represent positive steps forward. For example, new duties will be placed on local authorities to fund and commission education and training in juvenile custody.<sup>44</sup> This is a positive change, but one which should be viewed as a logical step towards devolved local authority budgets for the whole of the costs of custodial sentences. While new duties may help to improve the educational services offered by local authorities, stronger levers are surely needed to incentivise them to make all necessary provisions to prevent reoffending.

42 Secure Accommodation Network (2008), *Managing Transitions from Secure Settings*, May 2008

43 All examples taken from Secure Accommodation Network (2008), *Managing Transitions from Secure Settings*, May 2008

44 Youth Crime Action Plan, Home Office, Ministry of Justice, Department for Children, Schools and Families July 2008

Other proposals include a regularly reviewed “pathway plan” for young offenders, more emphasis on education and training, and plans to ensure suitable accommodation for all offenders leaving custody.<sup>45</sup> While these are worthy ideas, they do not go far enough. It is clear that local authorities need a financial incentive to respond appropriately and fully to the resettlement needs of young offenders, in order to prevent costly recidivism.

## International examples of financial incentives to reduce youth custody

Policy Exchange has examined four US states - California, Ohio, Pennsylvania and Illinois - which have implemented financial reforms to encourage non-custodial sentencing of young offenders. In each case, states introduced reforms in response to severe overcrowding and funding shortfalls in their youth justice systems. Ohio’s institutions, for example, were operating at 180% of capacity in 1992,<sup>46</sup> a 20% increase on the previous year,<sup>47</sup> while California’s state institutions operated at 160% of capacity in 1996/7.<sup>48</sup>

Part of the reason for such high levels of juvenile incarceration in these states was their existing funding models. The cost of imprisoning young offenders in both Illinois and Ohio was borne entirely by the state,<sup>49</sup> which also paid the vast majority of the bill in California and Pennsylvania.<sup>50</sup> So counties had no financial incentive to seek non-custodial sentencing alternatives.

In order to combat this problem, new funding systems were implemented based on one of two broad models.

### 1. Funding for counties with scaled charges for use of state facilities. An example of this type of system is the RECLAIM Ohio programme, implemented state-wide in 1995:

Ohio funds counties based on a four-year average of young people sentenced to custody, which is converted into a quantity of credits. This quantity is reduced according to the number of places in state facilities used in the previous year. Use of places in state prisons costs 1 credit, compared to 2/3 of a credit for community prison facilities. ‘Public safety’ places- used for serious crimes such as murder- are excluded.<sup>51</sup> Each court’s percentage of the remaining credits state-wide is then converted into that court’s percentage of total RECLAIM funding for community-based provisions.

Charging for use of facilities in this way is designed to incentivise counties to develop and use alternative provisions, while basing funding on a four-year average of felony adjudications allows for a sufficiently consistent and predictable funding stream.

### 2. Funding based on counties’ needs assessment and planning, such as that implemented under the Redeploy Illinois scheme, piloted in 2004:

Under Redeploy Illinois, state funds are allocated to counties that promise to reduce young offender incarcerations by 25%. To be eligible for the funding, counties are expected to submit plans for meeting the 25% target, and for increasing the non-custodial provisions available in their jurisdiction.<sup>52</sup> The plans are expected to be implemented upon receipt of Redeploy funding, while failure to meet the reduction target results in financial penalties for the county in question.

45 Ibid.

46 [http://ojjdp.ncjrs.org/pubs/reform/ch3\\_d.html](http://ojjdp.ncjrs.org/pubs/reform/ch3_d.html)

47 Texas Public Policy Foundation, *Policy Perspective*, March 2009; <http://www.texaspolicy.com/pdf/2009-03-PP07-reclaim-el-cl.pdf>

48 [http://www.lao.ca.gov/analysis\\_1996/a96d2.html](http://www.lao.ca.gov/analysis_1996/a96d2.html)

49 <http://dlcc.wiredforchange.com/o/5469/p/10021/blog?key=1035>; Texas Public Policy Foundation, *Policy Perspective*, March 2009; <http://www.texaspolicy.com/pdf/2009-03-PP07-reclaim-el-cl.pdf>

50 Tyler, Ziederberg & Lotke, *Cost-effective youth corrections*, Justice Policy Institute, 2006; [http://www.chicagometropolis2020.org/documents/Cost\\_Effective.pdf](http://www.chicagometropolis2020.org/documents/Cost_Effective.pdf)

51 <http://www.dys.ohio.gov/dnn/Community/ReclaimOhio/tabid/131/Default.aspx>

52 Lowenkamp & Latessa, *Policy Perspective*, Texas Public Policy Foundation, March 2009; <http://www.texaspolicy.com/pdf/2009-03-PP07-reclaim-el-cl.pdf>

The use of a plan-based scheme such as this the benefit of ensuring consistency in annual funding, and allowing counties to alter their funding arrangements in response to changes in service requirements.

### Effect of reforms

Both schemes appear to have had substantial effects on young offender custody rates. Illinois reported that three of its four pilot areas exceeded their 25% reduction target, and that \$1,411,000 was spent on community programmes in one year of the initiative. A total of \$2,123,306 was saved that would otherwise have been spent on incarceration.<sup>53</sup> On average, the number of young people sent to state prisons in Illinois was reduced by 44% in participating areas. In April 2009, Illinois Governor Pat Quinn signed legislation removing the pilot status of Re-deploy Illinois - it will now be a permanent programme with the capability to expand to counties throughout the state.<sup>54</sup>

In Ohio, the number of young people going into state prisons has fallen from 3600 in 1994 to around 1800 in 2007. RECLAIM Ohio has provided counties with over \$330 million, funding over 700 programmes per year. Each dollar spent on RECLAIM programmes saves \$11-45 compared to use of state prison places.<sup>55</sup> There is also strong evidence that the initiative has had a positive effect on reoffending rates. A 2004 study by Cincinnati University found that reoffending rates for lower-risk young offenders in RECLAIM programmes are lower than those of lower-risk young offenders in state custody. 75% of those served by RECLAIM programmes were classified as lower-risk.<sup>56</sup>

California and Pennsylvania, which implemented similar reforms, also reported a large increase in funds available for community programmes, and a decrease in numbers of young offenders admitted to state institutions.

53 Ibid.

54 <http://www.modelsforchange.net/reform-progress/11>

55 Texas Public Policy Foundation, *Policy Perspective*, March 2009; <http://www.texaspolicy.com/pdf/2009-03-PP07-reclaim-el-cl.pdf>

56 Lowenkamp & Latessa, *Evaluation of Ohio's Reclaim funded programmes, community corrections facilities and DYS facilities*, Cincinnati University, 2005; <http://www.dys.ohio.gov/dnn/Community/ReclaimOhio/University-ofCincinnatiRECLAIMOhioStudy/tabid/143/Default.aspx>

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## Options for reform

There are a number of options for reforming the youth justice system to remove the perverse incentive described in this report. During the drafting of the youth crime action plan, Ministers and civil servants considered some of the options but no agreement was reached. In the end, there was only one mention in the action plan of whether this systemic issue should be resolved – a reference to “making the costs of custody more visible”, which would “demonstrate the savings that are made where local areas reduce the use of custody and conversely the costs incurred when custody use increases”.<sup>57</sup> This would, according to the Government, “help inform the debate on whether, in the long-term, local author-

ities should be responsible for the placement and funding of custodial placements.” But, no view was expressed on whether this would be a welcome development. However, in recent months, YJB chair Frances Done has suggested that local authorities should be responsible for the full cost of youth custody. She agrees that the current system contains “perverse incentives” and argues that if bud-

gets were devolved it would push young offenders up the agenda of children’s services across the country, which could be the catalyst for a reduction in custody numbers.<sup>58</sup> However, a viable mechanism for actually implementing such a reform has not, to date, been articulated. It is time to reopen this debate.

All the options described below have advantages and disadvantages. A number will go some way to addressing problems in the short term, but with no ambition for wider, longer-term reform of the system. The more radical options carry a greater degree of risk but they may also hold the key for future innovation, especially in the kind of institutions used to hold young people who are sentenced to custody – which are generally large, ineffective, prison-like institutions which hold young people many miles from home.

But the aims are clear. Youth custody budgets should be paid for by local councils:

- to incentivise local authorities to move resources upstream so that problems are identified and tackled earlier;
- to ensure that practical steps are taken to ensure that custody is used as a last resort;
- to reinvest savings in crime prevention and to enable local authority actors to make the case at a local level for pooling budgets and planning for long-term investment in prevention programmes; and
- to encourage a real focus on breaking the cycle of reoffending.

““ The more radical options carry a greater degree of risk but they may also hold the key for future innovation, especially in the kind of institutions used to hold young people who are sentenced to custody””

<sup>57</sup> Ibid, p70

<sup>58</sup> *Should councils bear the cost of youth custody*, Children and Young People Now, 25th May 2009

Devolving budgets for youth custody places down to a local authority level raises two important questions. First, since these devolved budgets will be newly created at the local authority level, how should each local authority's budget be calculated? Second, what does 'devolving' mean - what, if anything, will local authorities be able to actually do with this budget?

### The budget

The Youth Justice Board estimates that the average annual cost of custody per young offender is £75,750. This is £1,452 a week, or £207.53 per day. However, as discussed above, the true costs are likely to be substantially higher. Any budget calculation should therefore be contingent on the Government first determining the true cost of custody. For illustration, the below options are set out using the official figure of £75,750.

There are five viable options for calculating the budget: two based on the current or historical costs of custody to the Youth Justice Board, one based on a funding formula, and two for budgets which change according to the type of offence or sentence. The options are:

#### **Option 1. A budget based on the costs of custody to central government in the last year:**

If a local authority had 100 people sentenced to custody in 2009, each spending an average of 140 days in prison, the budget would be:

$$100 \times 140 \times £207.53 = £2,905,420.$$

This would be the most up-to-date baseline figure. However, the year-to-year fluctuations in custody numbers might mean that a local authority would be penalised by a simple one year measure.

#### **Option 2. A budget based on a historical measure of the costs of custody to central government:** This could be based on the average annual cost of custody over, for example, the last three years.

If the same local authority had 125 young people sentenced to custody in 2007, 115 in 2008, and 100 in 2009, all spending an average of 140 days in prison, the budget would be:

$$(125 + 115 + 100) \div 3 \times 140 \times £207.53 = £3,292,809$$

Of these first two options, option 2 – an average measure – would provide a more accurate reflection of the flow of young people into custody and will not penalise a local authority which had an unusually low number of receptions into custody in the last year.

However, despite the fact that well-performing areas would not lose out from either of these options, both may be seen to 'reward' those local authorities that have not made real efforts to reduce the numbers of young people in custody, i.e. those with a high custody rate and per capita rate.

#### **Option 3. A budget based on a funding formula:** This could take into account factors other than current or historical costs to central government, including

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socio-economic and deprivation indicators to produce an expected rate of custody, more closely correlated with crime rates. Such a measure could also include a historical custody rate, recognising that it may not always be possible to achieve a consistent custody rate across the country. However, this would mean that poorly-performing areas would face significant shortfalls in the first instance, potentially perpetuating the cycle of failure. For example, Merthyr Tydfil and Caerphilly and Blaenau Gwent might be expected to have similar levels of custody due to their socio-economic and crime-rate similarities. However, Merthyr Tydfil's custody rate is much higher. If a budget based on a funding formula was introduced, Merthyr Tydfil would not receive anything like enough money to pay for the costs of custody.

**Option 4. A budget based on the type of offence:** Another option could be to have a different budget according to the seriousness of an offence, on a sliding scale, as in California. So a 'less serious' offence would cost the local authority more than a 'more serious offence': an offence of murder might carry no cost or a smaller cost than an offence of breach of a community order, for which the full costs (£75,750) would apply.

Setting such a budget would involve applying different tariffs to different offences and then modelling what these sentences would have been 'worth' historically. Reductions in the numbers sentenced for less serious offences in subsequent years would thus allow savings to be recouped.

This would allow a local authority to recommend a sentence of custody when necessary for public protection without being financially penalised. However, it might be argued that this would involve inappropriate value judgments as to the severity of an offence, which should properly be made by a judge or magistrate. Who is to say whether flagrant and consistent breaches of a community order are less 'serious' than another offence?

**Option 5. A budget based only on Detention and Training Orders (DTOs):** The most common sentence given to young people is a Detention and Training Order. More serious offenders receive other sanctions. There is an argument that while the costs of custody for DTOs should be borne locally, local authorities should not have to pay for the sentences of the most serious offenders. This would mitigate the danger of financial liabilities for murderers and rapists (for example) extending for long periods of time, e.g. those who might receive life sentences. It would also protect against those unforeseen incidents which may have been difficult or even impossible to prevent (such as the James Bulger murder).

So local authorities would only be given a budget based on the current or historical costs of the number of DTOs handed down in their locality and would be able to recoup savings for future reductions in their use.

There is a danger, though, that basing budgets on DTOs would dilute the effect of these reforms. The point is to incentivise all kinds of crime reduction, including the most serious crimes. With respect to longer sentences or life sentences, there could simply be a time limit placed on the liabilities of local authorities to pay for custodial sentences which were handed down before the young person was eighteen but extended well after the young person reached adulthood.

**Option 6. The budget should be financed through local taxation:** Youth Justice Board costs of around £300 million a year for custodial placements are small relative to the total local government spend (of around £150 billion a year). Ultimately, the budgets for youth custody could simply be financed locally through council tax.

#### Control over the budget

Once a budget method is decided, the next question is what level of control local authorities should have over how it is spent. Again, there are a number of potential models, each with different risks and rewards:

**Model 1: Central commissioning - local authorities have little control:** In this scenario, the budget would be 'indicative', with the YJB remaining responsible for commissioning custodial places at a central level. Local authorities would be given their respective indicative budgets at the beginning of the year and would be billed for the eventual use of custody at the end of the year. They would be free to spend as little or as much of this budget on reducing the use of custody in the interim as they wanted.

But the real aim is to 'nudge' the local agencies to use existing resources better. So if a local authority was given a budget of £3 million and managed to reduce its use of custody in the next 12 months through better use of existing budgets, the cost to central government might be £2.5 million, which would be charged back by the YJB. The local authority would retain the £500,000. Conversely, if the custody rate gets worse, the council will have to make up the shortfall. This is a real change from the traditional approach to central government funding of local authorities, which encourages local government to spend all of its budget to ensure that it receives the same level of funding in the following year.

This 'charge-back' mechanism would incentivise local authorities to take steps to reduce youth crime and the use of custody because it will make them loss averse – they will seek to pay back as little as possible at the end of a year. It does, though, beg the question of whether local authorities will simply feel that the budget has been 'dumped' on them. At the moment, they have little, if any, control over the commissioning of custodial places and over the placement of young people in the different institutions. This means they have very little control over outcomes, with offenders being placed many miles from home, making resettlement and the prevention of reoffending difficult. A prime example is the recent closure of Orchard's Lodge, a secure children's home in South London, a decision which was opposed by many of the local authorities in the area. The company which runs the home is taking legal action over the Youth Justice Board's decision to withdraw its contract and there is a risk that the home will close in July. According to some, the YJB's decision could result in children from London being sent to secure children's homes in Bristol, Southampton, the Midlands and the North East.<sup>59</sup>

One way of improving local authorities' involvement in commissioning and placement would be to afford them a greater consultative role. For instance, the YJB could create a partnership board made up of representatives of local authorities to discuss issues of management, placement of offenders, and the future direction and composition of the secure estate.

59 Legal challenge over last secure children's home in London, Children and Young People Now, 1st May 2009

**Model 2: Regional commissioning - local authorities have more control:** A second option would be to move away from a centrally commissioned system towards a regional system. This would involve setting up new regional bodies or partnerships to which local authorities would contribute financially, according to one of the budget methodologies described above, and jointly plan for their expected requirements. The advantage of this would be that local authorities would have an even greater role in managing the secure estate, taking part in decisions on closures, capital spending and in the placement of young offenders. However, this is likely to be much more bureaucratic than the current system.

**Model 3: Local commissioning - local authorities have full control:** In this model the budgets would be fully devolved to local authorities who would have total control over how the budget is spent. They would be able to spot-purchase existing places in the current custodial estate or pool resources with neighbouring local authorities to commission new custodial institutions. This

would allow them to recognise economies of scale, efficiencies and potentially foster new and innovative approaches to dealing with young people in custody.

This is the most radical option and carries some risk. The first is whether local authorities would be ‘up to the job’, in terms of capacity

for commissioning and ability to provide places on the scale required. However, there are precedents for the volume and scale of this kind of commissioning. For example, English councils spend around £500 million a year on out-of-borough placements for pupils with special educational needs.<sup>60</sup> There are around 11,000 of these placements, 75% of which are residential.<sup>61</sup> The numbers and the amount of money at least should not, therefore, present a problem. In addition, there is some evidence that local councils are actually better-placed than central government to commission and purchase services, particularly when commissioning is outcome-focused. Camden Council, for example, is building a ‘sustainable commissioning model’ which will enable the council to better understand the long-term impact of its commissioning on social, economic and environmental outcomes, to stimulate innovation amongst providers and to recognise the role of the voluntary sector and wider community in designing services.<sup>62</sup>

Second, there is a danger that giving local authorities full control would drive down standards, as it could lead to more children being sent to privately-run, cheaper providers. However, standards are questionable at the moment. Despite the establishment of the YJB, there has been increasing criticism of the fact that conditions in custody are unsuitable, legal action over the inappropriate use of physical restraint and high rates of self-harm and suicide. There has also been no perceptible reduction in the number of children sentenced to custody.

Under this model, local authorities would be dually responsible for ensuring that young people do not end up back in prison and will therefore have an interest in providing the right kind of institutions – ones which are focused on reoffending but which also place vulnerable young people in suitable accommodation. Local authorities may prefer to commission very small, local units (which are proven to produce better outcomes), so the secure accommodation might

“ There is some evidence that local councils are actually better-placed than central government to commission and purchase services, particularly when commissioning is outcome-focused ”

<sup>60</sup> As noted by Rob Allen in *The cost of custody*, Chapter 2, *Children and young people in custody: managing the risk*, Robert Newman, Maggie Blyth and Chris Wright, The Policy Press, 2009

<sup>61</sup> Audit Commission (2007) *Out of authority placements for special educational needs*, London: Audit Commission

<sup>62</sup> Sustainable Commissioning Model, Policy Briefing, March 2008

be more expensive than is currently the case. However, this could hardly be described as a retrograde step: there might well be an increase in staff ratios and quality of care, as local authorities decide to ‘invest to save’, moving resources upstream to provide better reoffending outcomes and therefore realise significant future savings. Again, the move towards outcome-based commissioning could be crucial here, as real emphasis is placed on being able to demonstrate future savings and to take them into account in the design of services. In any case, there will of course be a need for a strong regulator and inspectorate to ensure good minimum standards are adhered to. This may be a suitable role for the Youth Justice Board, or another agency at a central level.

Finally, there may be a concern about some of the most intensive alternative to custody options, some of which (such as intensive fostering, currently being piloted in a small number of areas) are very expensive. Local authorities may prefer children to go into cheaper, custodial placements than an expensive alternative to custody (which can cost around £100,000 a year). However, if the Youth Justice Board or Ministry of Justice was able to work out what the true cost (rather than the official cost) of custody was, it is likely that there would be very little difference between the cost of intensive fostering and the true cost of a custodial placement. Again, with a new incentive to focus on outcomes, there would be an expectation that local authorities and their agencies would make decisions and recommendations based on reducing reoffending rates. This would lead them to make more, not less, recommendations of intensive fostering – especially in light of an as yet unpublished YJB evaluation of the pilots, which shows reoffending rates plummeting for young people on intensive fostering placements compared with those sentenced to custody.<sup>63</sup>

63 *Intensive fostering must go national, urges YJB*, Children and Young People Now, 5th June 2009

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# Recommendations

The recommendations set out below aim to explain a process by which the youth justice system can be reformed so that the cycle of failure – with increasing numbers of children in custody and no incentive to reduce youth offending or the custodial population through improved practices and crime prevention – can be ended.

The perverse incentive needs to be removed so that local authorities foot the bill for the use of custody, creating a new cycle in which money saved through reduced incarceration can be reinvested locally, resulting in less crime and lower costs.

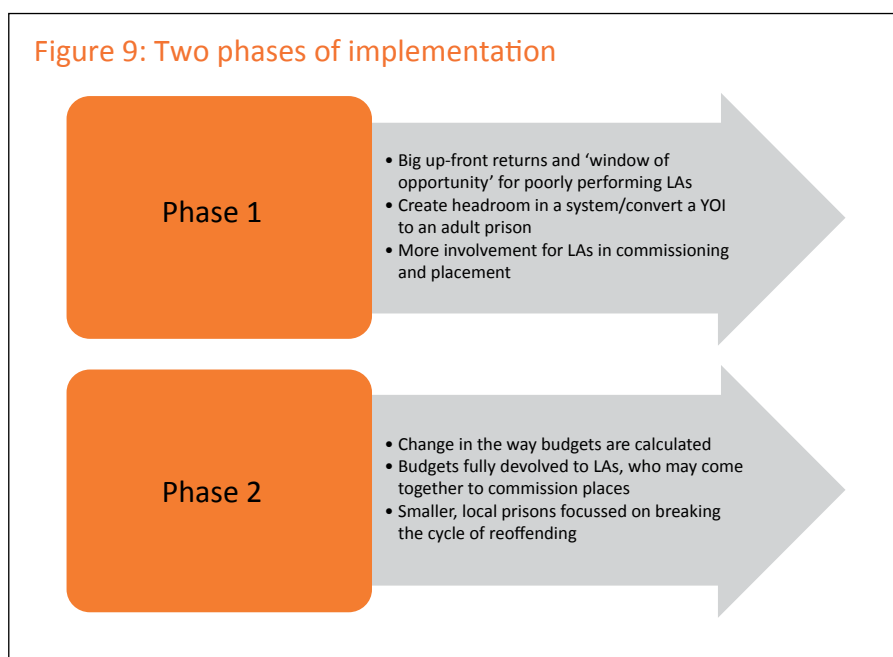
## **1. The Government should devolve the budgets for youth custody to local authorities. This would incentivise local authorities to do three things:**

- To ensure that all local agencies, particularly children's services and youth offending teams, do everything possible to ensure that prison is only used as a last resort. 'Cost-shunting' and the alleged treatment of custody as a kind of 'respite' care will be eliminated. Practices and processes will be reviewed and the most chronic and difficult young people should get the support and focus they require. Apart from the culture change required in a number of local areas, there are a number of practical steps which could be taken in order to achieve this, including: maximising diversion from court and/or the use of first-tier sentences; ensuring good quality bail supervision and support; building a constructive relationship between the youth offending team and the court; developing a sensible and mutually agreed breach policy; enhanced practices for the drawing up of pre-sentence reports; providing alternatives to custody; and better practice from children's services in supporting children in care.
  - To ensure that local authorities do much more to prevent youth crime as this is the best way to reduce the custodial population in the medium and long term. This must come from a sustained and targeted approach to those children most likely to commit crime, using the best available evidence about what works in preventing crime. Intervening early will reduce crime and its costs later. Examples of programmes which are proven to reduce youth offending, and strategies for implementing them, can be found in Policy Exchange's recent report, *Less Crime, Lower Costs*.
  - To ensure that local authorities provide much better aftercare and resettlement for young people who are released from custodial sentences. The new incentive will mean renewed focus is placed on reoffending, abating the unrelenting cycling of young people in and out of custody.
-

## 2. Implementation should take place in two distinct phases.

During Phase 1, poorly-performing local authorities should be incentivised to reduce the numbers of children going into custody with the promise of significant cost savings for them as a result (described further below). Giving the areas with the highest custody rates the biggest incentives first is the way to achieve the greatest up-front returns, with the potential for significant short-term reductions in the custodial population. This in turn will create real breathing space in the system. The Youth Justice Board would retain overall control of commissioning and placement, but at the same time, local authorities would be given a greater say in the commissioning of custodial places and with space in the system freeing up, a greater role in the placement of young offenders will also be possible.

During Phase 2, the funding mechanism should change and be allocated according to a funding formula, producing an expected rate of custody. Following this, local authorities should be given full control of the budget and full responsibility for commissioning. They will be able to group together to purchase custodial places in order to improve efficiency, recognise economies of scale and work together to provide innovative new approaches to secure accommodation.



### Phase 1

#### Local authorities should initially be given an indicative budget.

- The Youth Justice Board will remain legally responsible for commissioning and tendering contracts at a central level, as described in Model 1 on page 29.
- At present, local government actors have no role in commissioning custodial places. It is therefore not feasible to fully devolve budgets to local authorities straight away. What needs to happen first is for local authorities to have much greater involvement in the commissioning of custodial places and the placement of young offenders. There must be real involvement in the decision-making process at a central level for bodies representing local government and

better consultation with individual local authorities when decisions are made to build new facilities or close existing ones.

- During Phase 1, the YJB should create a partnership board so that this is possible. At the same time, this transition phase should involve training for local authority actors in commissioning and a programme of capacity building so that the transition towards fully-devolved budgets is smoothed.

**This budget should initially be based on historical rates of youth custody and a tariff for the cost of a custodial place.**

- This should be calculated according to a local area's average annual cost to the Youth Justice Board over the last three years, as outlined in Option 2 on page 27. First of all, the Youth Justice Board should work out what the true cost of a place in youth custody is, given that it is likely to be substantially more than the official figure. Once this has been done, an average tariff can be calculated. Local authorities should be given their respective budgets at the beginning of the year and will be free to invest as much or as little of the budget as felt necessary in efforts to prevent young people from committing crime and going to prison. At the end of a year, the local authority will then be billed for the costs imposed during the year.
- This method for calculating the budget provides the best opportunity for the greatest initial returns because those local authorities that have high custody rates have the chance to make significant up-front savings and can reinvest the recouped savings in prevention programmes.
- During this phase, the savings should also be ring-fenced, to be spent by children's services and youth offending teams (or other agencies or voluntary groups who have an impact on youth offending). As discussed above, it is estimated (according to the YJB's own methodology) that savings of more than £40 million a year (and probably much more) are possible. Even based on this conservative estimate, an extra £40 million would represent a doubling of the central annual budget for crime prevention through youth offending teams.
- It is not recommended that the price of the tariff should vary according to the type of sentence, as outlined in Option 5 on page 28. The goal of the reforms is crime prevention, not simply to reduce the amount of people who go to custody for so-called minor offences. However, there should be some recognition of the impact of long sentences. Therefore it is recommended that the local authorities' liabilities for the costs of youth custody should exist only as far as the Youth Justice Board's liabilities currently extend for a sentenced young person (to the age of eighteen).
- Likewise, the tariff should not vary according to the type of offence committed, as described in Option 4 on page 28. While theoretically an interesting lever, a sliding scale system as described earlier, which would disincentivise the use of custody for less serious offences, is not appropriate. This is because such a mechanism risks missing the long-term point of the reforms which is to encourage crime prevention and proper after-care, which will, in turn, result in the most significant reduction in the custodial population.

**As the youth custody population begins to fall, the Youth Justice Board should aim to close one Young Offender Institution (YOI) or convert it to an adult prison.**

- With custody numbers expected to fall during this period as a result of the reforms described above, the YJB should ensure that the benefits and savings derived from lower use of custody are fully realised at a central level. Targets set (and missed) by the Government indicate that a 10% reduction in the custodial population is possible - and it should be made much easier to achieve following these reforms. Indeed, as described above, if every YOT area was able to 'normalise' its custody rate (reducing it to that of its most similar relative), the youth custody population at any one time would fall by almost 600 places. The Youth Justice Board should therefore examine what the consequences should be for the custodial estate and what decommissioning should take place.
- The Government should aim to fully close one (or more) of England and Wales' seventeen Young Offender Institutions as a result of these reforms. Alternatively, a YOI could be converted into an adult prison to alleviate overcrowding problems. This would be very straightforward given that YOIs already hold some adult prisoners.

#### Phase 2

**After a two year period, the budget should change and be calculated according to a funding formula.**

- There must be a very clear expectation for every local authority that the way the budget is calculated will be set to change after a two year period. Poorly performing local authorities will therefore have a two-year window in which to realise savings through improved practice, better prevention activities and a more constructive relationship between local agencies and the courts. This is the time for local authorities to 'get their house in order' and to recoup savings, the vast bulk of which should be reinvested in children's services and youth offending teams (or indeed in other agencies or voluntary groups which can have an impact on the custody rate). Reinvesting these savings in crime prevention activities is the way to begin the new cycle of reinvestment in youth justice. Some savings may also be invested in building capacity within the local authority for the future procurement of custodial places.
- Following this period - once local authorities have improved their efforts to prevent youth crime and ensure that custody is used as a last resort - the budget will change from a formula based on historical use of custody to a formula based on future, expected use of custody (as described in Option 3 on page 27). This will include a historical element but will also include other key socio-economic variables to reflect crime rates. Such indices may closely resemble the new YOT families methodology currently being developed by the Youth Justice Board. This change will also assuage those local authorities who may have felt penalised by the way the budget was initially set. After a period of ring-fencing - to ensure maximum visibility and reinvestment of savings - it could eventually be administered as part of the area based grant and local area agreements. In the long term, any central funding could be ended and local authorities could have to raise the money through local taxation.

**Local authorities should then be given full control of the budgets:**

- The ultimate conclusion of this process is that local authorities should have full control of the budget (Model 3 on page 30). They would therefore be responsible for allocating resources for prevention, punishment and rehabilitation activities – encouraging a holistic and locally-focused approach to dealing with youth crime in their respective areas. They would be able to group together to purchase places in the existing custodial estate and, over time, it is expected that they will begin to commission new kinds of secure institutions. Given the interest that local authorities would now have in reducing reoffending, it is likely that they will seek to commission much smaller custodial units, based locally and linked in to the community to provide better aftercare and resettlement.
- While this would involve some up-front costs, the aim is to encourage local authorities to invest to save and to explore new approaches. This could involve the pooling of budgets for community provision with budgets for custodial provision, building upon the multi-agency approach and local infrastructure already in place through youth offending teams. An innovative model for just such an approach has been developed by The Foyer Foundation, a charity in East London. It is seeking approval for a pilot ‘Young Offenders Academy’ with plans for it to be operational by 2012. The aim is to provide an integrated and uninterrupted approach to the needs of and services for local young offenders awaiting trial, remanded in custody, serving custodial and community sentences and for those released and on licence. There will be a mix of secure placements (50-75 places), a residential component for those who require support and surveillance (50-75 places), and a range of residential, health, educational, recreational, sporting and family support services. It will draw on wider local authority budgets for these services, with the specific aim of reducing youth crime. It would, in other words, have co-location of services for boys who either need to be held securely, or for those who need to make the transition to supporting themselves in the outside world. The Foyer Foundation estimate that they can provide this service for no more money than it currently costs to incarcerate young people. Policy Exchange will be exploring this, and other potential models for the provision of youth custody and community provision, in a forthcoming report to be published later in the year.
- It is this kind of innovation which is simply not possible under the current system but which will become possible once budgets are given to local authorities. With local authorities directing the process, innovative new opportunities involving pooled-budgets, joint commissioning and real long-term planning are possible. There will, of course, be a need for an independent inspectorate, ensuring good minimum standards and the safety of young offenders. This could involve a ‘slimmed-down’ Youth Justice Board, or even a different body altogether.

One of the biggest obstacles to tackling youth crime is the fact that central government alone bears the cost of providing custodial places for young people. Almost all of the agencies responsible for preventing youth crime are based locally, but when efforts to prevent crime fail, local authorities have nothing to lose. In fact they can gain, as expensive services such as care, community sentences or special educational provision no longer have to be provided by the local authority. This creates a perverse incentive, meaning that not every step is being taken to keep young people away from crime and out of prison. As a result, measures to intervene early to steer children away from crime are not being taken and there is a lack of focus at a local level on preventing young people from reoffending and ending up back in prison.

The concentration of young people in custody varies hugely across the country, with one in four hundred children in prison in some areas, compared with one in sixteen thousand in others. Comparisons of areas with similar deprivation and crime rates reveal large disparities which, if rectified through better crime prevention, early intervention and resettlement efforts, could mean the youth custody population falling by almost 600 places – a quarter. This would save the Youth Justice Board around £50 million a year and would unlock wider savings of around £250 million through reduced crime. If these savings could be realised and reinvested in crime prevention, the cycle of reinvestment created could have a dramatic impact on youth crime. As a result, Young Offender Institutions could be closed or converted to adult prisons, to alleviate overcrowding.

While there was discussion in Government in 2008 about whether local councils should foot the bill for youth custody, nothing has yet happened. This report recommends that this is the way to remove the perverse incentive at the heart of the current system. It recommends that budgets for custody should be devolved to local authorities and suggests that, over time, local authorities should have full control of the budgets. This radical change would open up opportunities for new approaches to youth justice, with local authorities responsible for prevention, enforcement and resettlement. It also has the potential to change the composition of the custodial estate for the better, with a new influx of much smaller, local secure units focused on breaking the cycle of reoffending.

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